

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the North American Numbering	)	CC Docket No. 99-200
Plan	)	
	)	
Bandwidth.com, Inc. Petition for Limited Waiver of	)	
Section 52.15(g)(2)(i) of the Commission's Rules	)	
Regarding Access to Numbering Resources	)	

**PETITION FOR LIMITED WAIVER**

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**PETITION FOR LIMITED WAIVER**

**I. INTRODUCTION**

Bandwidth.com, Inc. ("Bandwidth"), respectfully requests that the Federal Communications Commission ("Commission") grant it a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules, 47 C.F.R. § 52.15(g)(2)(i).

The Commission is currently contemplating Petitions for Waivers of rule 52.15(g)(2)(i) by fifteen separate entities, including Vonage Communications, LLC ("Vonage").<sup>1</sup> As the Commission is aware, this petition does not represent what

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<sup>1</sup> See, RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 7, 2005; Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 15, 2005; UniPoint Enhanced Services d/b/a PointOne Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 2, 2005; Dialpad Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources,

Bandwidth believes is the proper policy path forward; rather Bandwidth only files this petition to buffer against being placed in an unfair and competitively disadvantageous position. Bandwidth firmly believes the Petitions for Waivers are an inappropriate means to address the relief requested by Vonage and others; among other problems, the waivers would implement dramatic and fundamental changes to long-standing industry norms without having afforded all affected parties the due process required in a normal rule-making process. However, if the Commission is intent on proceeding in this ad hoc manner, the Commission must still address the issues in an even-handed and non-discriminatory fashion. For example, granting Vonage the relief it seeks without according Bandwidth the opportunity to compete on similar terms would be arbitrary and capricious and violate both Commission practice and the Administrative Procedure Act.<sup>2</sup>

In contrast to pure VoIP providers but like other carriers in the industry, Bandwidth has invested significant financial resources to deploy interconnection facilities, both in its capacity as a state-certificated carrier and as an IP-based information services provider, in

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filed March 1, 2005; Vonage Holdings Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005; VoEX, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005; Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 28, 2005; CoreComm-Voyager, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed April 22, 2005; Net2Phone Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 6, 2005; WilTel Communications, LLC Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 9, 2005; Constant Touch Communications Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 23, 2005; Frontier Communications of America, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed August 29, 2006. ("Petitions for Waivers")

<sup>2</sup> 5 U.S.C. §706(2)(A)

accordance with and in reliance upon well-established Commission precedents.<sup>3</sup> If the Commission wishes to change the framework under which Bandwidth and others made those investments and built their businesses, the Commission can do so. However, fairness to all parties and compliance with the law dictates that the Commission adopt final numbering rules either through the North American Numbering Council or in the *IP- Enabled Services* proceedings to avoid uneven and discriminatory regulation.<sup>4</sup> Nevertheless, if the Commission instead proceeds through a waiver process, Bandwidth also requests a waiver of Section 52.15(g)(2)(i) in a manner comparable to any other waivers granted until such final rules are adopted.

## **II. BACKGROUND**

Founded in 1999 and based out of the Research Triangle area of North Carolina, Bandwidth is a rapidly growing and innovative facilities and IP-based communications service provider. Seeing the technological and economic promise of IP networks, Bandwidth was an early entrant into the VoIP market. Initially Bandwidth operated entirely as a reseller of VoIP services by partnering with underlying CLECs and wholesale VoIP providers that provided numbering, PSTN-interconnection, and other critical intercarrier and telecommunications-based support. As Bandwidth grew and succeeded with its VoIP service offerings, it analyzed the legal and regulatory requirements to obtain numbering resources directly. To achieve the scale and cost

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<sup>3</sup> See e.g., *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking (rel. Nov. 8, 2007). ¶ 20 (“*VoIP Number Portability Order*”).

<sup>4</sup> See, *In the Matter of Administration of the North American Numbering Plan, Millicorp and SmartEdgeNet, LLC Petitions for Limited Waivers of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, Comments of Bandwidth.com, Inc., Level 3 Communications, LLC, and COMPTTEL, CC Docket No. 99-200, pp. 5-7 (Filed May 8, 2012)(“CLEC Coalition Millicorp and SEN Comments”).

savings it believed necessary to compete under the established industry framework, Bandwidth established a facilities-based carrier. Under the rules, continued operation solely as a VoIP reseller would not permit Bandwidth to obtain and manage numbering resources directly. Thus, in 2008 and 2009, Bandwidth invested millions of dollars of risk capital to build a network and complied with all state and federal rules to establish a CLEC itself. Within a year and a half, Bandwidth.com CLEC, LLC (“Bandwidth CLEC”) obtained state certification in 49 states. Since that time, Bandwidth has offered retail and wholesale VoIP services with CLEC partners, including its own affiliated carrier partner Bandwidth CLEC.

Today, Bandwidth is a leading innovator in simplifying business communications through its suite of all-IP cloud-based retail solutions, which integrate office VoIP systems, smartphones, and business-grade Internet connectivity for small and medium sized businesses. Bandwidth also powers VoIP network services for “Voice 2.0” innovators throughout the United States through its inetwork business unit, which operates a facilities-based, entirely IP-optimized nationwide network. These innovators range from established, well-known national VoIP providers to successful cutting edge start-ups experiencing rapid adoption of their products and services. Since Bandwidth entered the VoIP marketplace, it has experienced tremendous growth by powering fellow innovators. Bandwidth now handles billions of voice minutes through its inetwork, which is among the nation's fastest growing and most expansive communications networks. Bandwidth is thus uniquely positioned in the industry to be a catalyst for continued VoIP innovation and consumer demand.

Therefore, ad hoc waivers of rule 52.15(g)(2)(i) would be both a violation of

administrative fairness and destructive of the framework established by federal and state policy makers to achieve a myriad of policy goals, and place Bandwidth in a competitively disadvantageous position. Granting authority to non-carrier entities to obtain direct access to numbering resources also will trigger an industry-wide regulatory race to the bottom.

### **III. DISCUSSION**

#### **A. Commission Policy Should, and Can, Support Both IP Innovation and Fundamental Fairness**

As Bandwidth stated in its comments in the Commission's USF/ICC Reform proceeding:

Bandwidth commends the Commission for pursuing ambitious, comprehensive, and well-reasoned reforms to an outmoded intercarrier system that is stifling innovation. Bandwidth looks forward to competing in a communications market that is fundamentally fair but streamlined to avoid unnecessary layers of regulatory complexity....The Commission must act aggressively to implement reforms that embrace free-market principles to force carriers' focus away from regulatory-driven and technically artificial PSTN-based behaviors and toward the consumer benefits that result from a truly fair and competitive IP marketplace.<sup>5</sup>

Bandwidth has participated in the Commission's rulemaking proceedings earnestly and with an expectation that the Commission would make its decisions on the merits after a fair and thorough evaluation of the entire record. As Bandwidth noted, acting on one waiver petition, which would disturb critical aspects of the IP-Enabled NPRM at this stage, would be unwise, would cause a number of problematic, unintended consequences

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<sup>5</sup> Comments of Bandwidth.com, Inc. on Section XVII. L-R *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, , FCC 11-161 (rel. Nov. 18, 2011), p. 3 ("USF/ICC Reform Order" and "FNPRM")

and would upend much of the progress that the Commission has accomplished to date. Nevertheless, if the Commission proceeds in this way, Bandwidth must remain able to obtain access to telephone numbers in the same manner available to other competitors in the marketplace.

Telephone numbers are necessary for Bandwidth's VoIP customers utilizing broadband IP networks to receive calls from parties served by a carrier operating a time division multiplexed ("TDM") network within the PSTN. From the outset Bandwidth has understood this necessity and has partnered with telecommunications carriers, including its certificated telecommunications carrier affiliate Bandwidth CLEC, to effectuate this capability. According to its arrangement with its CLEC affiliate and other CLECs, carriers exchange Bandwidth's customer's communications on the PSTN. Carrier call routing necessary to support Bandwidth's VoIP service offering also includes utilization of IP-enabled networks.

Under existing rules, a VoIP provider that is not either a telecommunications carrier or partnered in some manner with a telecommunications carrier cannot directly acquire telephone numbers from NANPA or the pooling administrator ("PA"). Specifically, Section 52.15(g)(2)(i) requires that an applicant requesting North American Numbering Plan resources must be "authorized to provide service in the area for which the numbering resources are being requested." The Commission has interpreted this rule to require "carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area



in which they seek numbering resource[s].”<sup>6</sup> In other words, an applicant must be a state-certificated common carrier to obtain numbering resources directly from NANPA and/or the PA. This represents a carefully crafted, successful framework in which federal and state policy-makers have balanced incentives and obligations to ensure the necessary investment in infrastructure and innovation. In accordance with these rules, and as evidence of the framework’s logic, Bandwidth has invested considerable resources to become and operate a certificated telecommunications carrier over the last several years. Simultaneously, Bandwidth has been a leading innovator in IP services and with respect to the exchange of IP traffic.<sup>7</sup>

The Commission has found that offering interconnected VoIP services does not require state certification because it is inherently an interstate service.<sup>8</sup> Nevertheless, it has since reaffirmed the requirement that only a carrier can participate directly in the access and management of NANPA resources.<sup>9</sup> Since Bandwidth CLEC is a state-certificated common carrier, it can obtain numbering resources directly from NANPA and/or the PA without a waiver of Section 52.15(g)(2)(i) of the Commission’s rules. However, if the Commission deems it necessary to upset this current regime by granting direct access to scarce resources to non-certificated - and lightly regulated -providers, then Bandwidth’s waiver request also must be granted. Without such a waiver, Bandwidth would be hurt by its reliance on the Commission rules and also would be forced to compete against competitors who have all the benefits of being able to offer the

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<sup>6</sup> *Numbering Recourse Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, ¶ 97 (2000).

<sup>7</sup> See, <http://bandwidth.com/about/read/verizonAgreement.html>

<sup>8</sup> *In the Matter of Vonage Holdings Corporation*, 19 FCC Rcd 22404, ¶¶ 14-22 (2004).

<sup>9</sup> *VoIP Number Portability Order*, ¶ 12.

service of a carrier without any of the burdens imposed on a regulated carrier.

Bandwidth agrees that new IP interconnection architectures will allow it to use its softswitch and media gateways more efficiently to overcome limitations inherent to the interconnection architectures of the PSTN. However, these advances are so dramatic and revolutionary that proceeding into the next phase of telephone numbering resource management and utilization in North America in an ad hoc, undefined manner would be a colossal error. Nevertheless, if the Commission insists upon unleashing the confusion and litigation that inevitably follow this course, Bandwidth also hereby requests a limited waiver of Section 52.15(g)(2)(i) so that it can obtain numbering resources directly from NANPA and/or the PA without being a state-certificated common carrier.

While Bandwidth did not choose to pursue a business model in which it is not subject to state regulation, Bandwidth cannot effectively compete if the Commission provides its competitors all the regulatory rights but none of the obligations of regulated carriers. Should the Commission begin granting Petitions for Waivers now, many others are likely to follow suit – quickly leading to a situation in which many non-carriers have regulatory rights without attendant obligations. As a practical matter, however, the Commission cannot have it both ways. If it wishes to upset the current balance by granting ad hoc relief to one party, the Commission must accept the certainty that the Commission will have to grant similar relief to all others. The Commission consequently will have inadvertently created a new set of incentives to invest and build a business.

**B. “Good Cause” Exists to Grant Bandwidth’s Request for a Limited Waiver if the Commission Grants other Waiver Petitions**

Pursuant to Section 1.3 of the Commission’s rules, the Commission may waive a

rule when “good cause” is demonstrated.<sup>10</sup> The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.<sup>11</sup> In addition, the Commission may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.<sup>12</sup> Thus, waiver of the Commission’s rules is appropriate when special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.<sup>13</sup>

While pending Petitions for Waivers have fundamentally failed to demonstrate any identifiable hardship or special circumstance that would justify such a dramatic deviation from established procedures,<sup>14</sup> granting Bandwidth’s waiver request would qualify as a special circumstance due to a Commission decision to forgo established procedures for rulemaking that impacts the entire communications industry and would become necessary to avoid unfair discrimination as a result of such decision. If the Commission abandons NPRM procedures in favor of ad hoc methods, Bandwidth too would be able to choose how to be regulated as it works to deploy IP networks and VoIP services without subjecting itself to state common carrier regulation. Accordingly, “good cause” exists to grant Bandwidth’s waiver request if the Commission grants other pending Petitions for Waivers beyond that granted to SBC-IS.

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<sup>10</sup> 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>12</sup> *Id.*; *WAIT Radio*, 418 F.2d at 1159.

<sup>13</sup> *Id.*

<sup>14</sup> *See*, CLEC Coalition Millicorp and SEN Comments, pp.3-4.

### **C. The Requested Waiver is Comparable to the SBC-IS Waiver and Subsequent Waiver Requests**

The Commission granted a limited waiver to SBC-IS and stated that similar relief was available “to an extent comparable” to what the Commission set forth.<sup>15</sup> Bandwidth submits that it is actually in a far more comparable position to qualify for the relief requested than a number of other petitioners that are not otherwise affiliated with a certificated telecommunications carriers in the way that SBC (now AT&T) is.<sup>16</sup> The industry has operated with a basic understanding of how telecommunications carriers and information service providers are to be differentiated and positioned for regulatory purposes for almost three decades.<sup>17</sup> Now the entire dynamic is potentially jeopardized without regard to normal procedures, review or concrete guidance. This is similar to the flaw that many found in the Commission’s waiver of the rules that had long governed the MSS band license for LightSquared, which revealed significant problems that would likely have been identified in an NPRM process. The fall-out and wasted resources suggest the criticism was well placed.<sup>18</sup> The Commission should not repeat the problematic procedural approach of changing fundamental industry-wide technological expectations associated with long-established rules through individual waivers. Moreover, Bandwidth also requests the waiver to enable it to remain on equal competitive footing until the Commission adopts final numbering rules regarding IP-

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<sup>15</sup> *In the Matter of Administration of the North American Numbering Plan*; Order, CC Docket No. 99-200, 20 FCC Rcd 2957, (Feb. 1, 2005), ¶ 4 (“*SBC-IS Order*”).

<sup>16</sup> See e.g.: Petitions for Waivers of Millicorp, SmartEdge, and Vonage, CC Docket 99-200.

<sup>17</sup> *In re: MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

<sup>18</sup> See e.g., *In the Matter of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*; *In re Application of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Comments of AT&T, Comments of Trimble Navigation Limited, IB Docket No. 11-109; File No. SAT\_MOD-20101118-00239 (Filed Aug. 1, 2011).

enabled services. Of course Bandwidth recognizes that granting this limited waiver will very likely prejudice the outcome of the *IP-Enabled Services* proceeding but that is the inevitable consequence of granting the Vonage waiver.

If, however, the Commission chooses to do so and provides guidance in the context of individualized waivers of the rules, Bandwidth will similarly agree to comply with all of the conditions the Commission established in granting SBC-IS' request for numbering resources. In fact, Bandwidth, together with its CLEC affiliate and other partners, already complies with the Commission's numbering utilization and optimization requirements and industry guidelines and practices. Therefore, Bandwidth can commit to continue to comply with all relevant numbering regulations. Bandwidth and its carrier partners also will continue to do what is needed to file the Numbering Resource Utilization and Forecast Report ("NRUF"), comply with the thousand-block number pooling requirements, and act in accordance with local number portability requirements.

Finally, if the Commission begins granting new or long-standing Petitions for Waivers, the Commission also should grant Bandwidth's Waiver Request on an expedited basis. While fundamentally opposed to proceeding on matters of such significance as this through non-standardized ad hoc methods, Bandwidth seeks a waiver of Section 52.15(g)(2)(i) to ensure it is able to deploy IP-enabled service offerings on equal competitive footing.

#### **IV. CONCLUSION**

For the reasons described above, Bandwidth respectfully requests that the Commission grant Bandwidth a limited waiver of Section 52.15(g)(2)(i) of its rules—comparable to that granted to SBC-IS or subsequent waivers – to allow Bandwidth to

avoid uneven regulatory treatment and anticompetitive consequences so that it too may obtain numbering resources directly from NANPA and/or the PA for use in the provision of IP-enabled services.

Respectfully submitted,

/S/

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